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OFFICE OF PETITIONS

In re Application of	:
Purcell and Martin	:
Application No. 10/677,555	: DECISION REFUSING STATUS
Filed: October 2, 2003	: UNDER 37 CFR 1.47(b)
Attorney Docket No. CSAV-0015	:
For: SECURE PROMOTIONS	:

This is a decision on the renewed petition under 37 CFR 1.47(b), filed October 27, 2004.

The petition under 37 CFR 1.47(b) is **dismissed**.

Any request for reconsideration under this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. Failure to respond will result in the abandonment of this application. Any response should be titled "Request for Reconsideration of Petition Under 37 CFR 1.47(b).

The above-identified application was filed on October 2, 2003, without an executed oath or declaration or filing fee. Accordingly, a "Notice to File Missing Parts Nonprovisional Application" (the "Notice") was mailed on January 8, 2004, requiring an executed oath or declaration and a surcharge for the late filing of the oath or declaration, payment of the filing and additional claim fees. A petition under 37 CFR 1.47(b) was filed on June 11, 2004, and was dismissed by a decision mailed July 19, 2004. The instant renewed petition was then filed on October 27, 2004, along with a request for an extension of time within the second month.

A grantable petition under 37 CFR 1.47(b) requires:

- (1) proof that the non-signing inventor(s) cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims, and drawings);

- (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;
 - (3) the petition fee;
 - (4) a statement of the last known address of the non-signing inventor,
 - (5) proof of proprietary interest, and
 - (6) a showing (statement) that such action is necessary to preserve the rights of the parties or to prevent irreparable damage.

The instant petition lacks item (2) as set forth above.

As to item (2), the declaration filed with the instant petition cannot be accepted until the assignee demonstrates that it has the power to prosecute the application. Section 409.03(b) of the *Manual of Patent Examining Procedure* provides, in pertinent part, that, “[w]here the oath or declaration is being signed on behalf of an assignee, see MPEP 324.” Section 324 of the *Manual of Patent Examining Procedure* cites 37 CFR 3.71(c) which states that, “[a]n assignee becomes of record either in a national patent application or a reexamination proceeding by filing a statement in compliance with 3.73(b) that is signed by a party who is authorized to act on behalf of the assignee.” Petitioner should note that 37 CFR 3.73 requires that before an assignee can take action in a patent matter, the assignee must establish ownership of the patent property in accordance with 37 CFR 3.73(b)(1)(i) or (ii). No statement or certificate meeting the requirements of 37 CFR 3.73 was found in the application. Regretfully, this was overlooked by the undersigned when the decision of July 19, 2004, was rendered. Petitioner must properly establish ownership of the patent property before the assignee will be granted authority under 37 CFR 1.47(b) to prosecute the application. Enclosed is a “Statement Under 37 CFR 3.73(b)” that petitioner may use to satisfy this requirement.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: (703) 872-9306
Attn: Office of Petitions

Telephone inquiries should be directed to the undersigned at (571) 272-3222.



Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

Enclosure: Form PTO/SB/96—"Statement Under 37 CFR 3.73(b)"